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SENATE BILL 341

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO THE PRACTICE OF MEDICINE; AMENDING CERTAIN SECTIONS OF THE MEDICAL PRACTICE ACT; PROVIDING FOR THE SUBPOENA OF CERTAIN INFORMATION OBTAINED PURSUANT TO THE REVIEW ORGANIZATION IMMUNITY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 41-9-5 NMSA 1978 (being Laws 1979, Chapter 169, Section 5) is amended to read:

"41-9-5. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION. -- Except for information released pursuant to a valid subpoena issued under Section 61-6-23 NMSA 1978, all data and information acquired by a review organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of

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1 the review organization or in a judicial appeal from the action
2 of a review organization. No person described in Section [4 of
3 ~~the Review Organization Immunity Act~~] 41-9-4 NMSA 1978 shall
4 disclose what transpired at a meeting of a review organization
5 except to the extent necessary to carry out one or more of the
6 purposes of a review organization or in a judicial appeal from
7 the action of a review organization. Information, documents or
8 records otherwise available from original sources shall not be
9 immune from discovery or use in any civil action merely because
10 they were presented during proceedings of a review
11 organization, nor shall any person who testified before a
12 review organization or who is a member of a review organization
13 be prevented from testifying as to matters within [his] the
14 person's knowledge, but a witness cannot be asked about
15 opinions formed by [him] the witness as a result of the review
16 organization's hearings. "

17 Section 2. Section 61-6-7 NMSA 1978 (being Laws 1973,
18 Chapter 361, Section 3, as amended) is amended to read:

19 "61-6-7. SHORT TITLE-- LICENSURE AS A PHYSICIAN
20 ASSISTANT-- SCOPE OF PRACTICE-- BIENNIAL REGISTRATION OF
21 SUPERVISION-- LICENSE RENEWAL-- FEES. --

22 A. Sections 61-6-7 through 61-6-10 NMSA 1978 may be
23 cited as the "Physician Assistant Act".

24 B. The board may license as a physician assistant a
25 qualified person who has graduated from a physician assistant

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1 or surgeon assistant program accredited by the national
2 accrediting body as established by rule and has passed a
3 physician assistant national certifying examination as
4 established by rule. The board may also license as a physician
5 assistant a person who passed the physician assistant national
6 certifying examination administered by the national commission
7 on certification of physician assistants prior to 1986.

8 C. A person shall not perform, attempt to perform
9 or hold himself out as a physician assistant without first
10 applying for and obtaining a license from the board and without
11 registering his supervising licensed physician in accordance
12 with board rules.

13 D. Physician assistants may prescribe, administer
14 and distribute dangerous drugs other than controlled substances
15 in Schedule I of the Controlled Substances Act pursuant to
16 rules adopted by the board after consultation with the board of
17 pharmacy if the prescribing, administering and distributing are
18 done under the direction of a supervising licensed physician
19 and within the parameters of a board-approved formulary and
20 guidelines established under Subsection C of Section 61-6-9
21 NMSA 1978. The distribution process shall comply with state
22 laws concerning prescription packaging, labeling and
23 recordkeeping requirements. Physician assistants shall not
24 otherwise dispense dangerous drugs or controlled substances.

25 E. A physician assistant shall perform only the

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1 acts and duties assigned to the physician assistant by a
2 supervising licensed physician that are within the scope of
3 practice of the supervising licensed physician.

4 F. An applicant for licensure as a physician
5 assistant shall complete application forms supplied by the
6 board and shall pay a licensing fee as provided in Section
7 61-6-19 NMSA 1978.

8 G. A physician assistant shall biennially submit
9 proof of current certification by the national commission on
10 certification of physician assistants and shall renew the
11 license and registration of supervision of the physician
12 assistant with the board. Applications for licensure or
13 registration of supervision shall include the applicant's name,
14 current address, the name and office address of the supervising
15 licensed physician and other additional information as the
16 board deems necessary.

17 H. Before starting work, a physician assistant
18 shall ensure that the supervising [~~licensed~~] physician of the
19 physician assistant is [~~registered~~] licensed by the board. The
20 license of a physician assistant shall only be valid when the
21 physician assistant works under the supervision of a board-
22 registered licensed physician.

23 I. Each biennial renewal of licensure shall be
24 accompanied by a fee as provided in Section 61-6-19 NMSA 1978. "

25 Section 3. Section 61-6-11 NMSA 1978 (being Laws 1923,

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1 Chapter 44, Section 3, as amended) is amended to read:

2 "61-6-11. LICENSURE. --

3 A. The board may consider for licensure a person
4 who ~~[is of good moral character]~~ is a graduate of ~~[a medical~~
5 ~~college or school in good standing]~~ an accredited United States
6 or Canadian medical school, has passed an examination approved
7 by the board and has completed two years of an approved
8 postgraduate training program.

9 B. An applicant who has not completed two years of
10 an approved postgraduate training program, but who otherwise
11 meets all other licensing requirements, may present evidence to
12 the board of the applicant's other professional experience for
13 consideration by the board in lieu of the approved postgraduate
14 training program. The board shall, in its sole discretion,
15 determine if the professional experience is substantially
16 equivalent to the required approved postgraduate training
17 program.

18 C. A graduate of a board-approved medical ~~[college]~~
19 school located outside the United States or Canada may be
20 granted a license to practice medicine in New Mexico, provided
21 the applicant presents evidence to the board that the applicant
22 is ~~[a person of good moral character and is]~~ in compliance with
23 the United States immigration laws and provided that the
24 applicant presents satisfactory evidence to the board that the
25 applicant has successfully passed an examination as required by

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1 the board and has successfully completed two years of
2 postgraduate medical training in an approved postgraduate
3 training program.

4 D. All applicants for licensure may be required to
5 appear personally before the board or a designated agent for an
6 interview.

7 E. An applicant for licensure by examination shall
8 not be granted a license if the applicant has taken the
9 examination in two or more steps and has failed to successfully
10 pass the final step within seven years of the date that the
11 first step was passed. An applicant for licensure who holds a
12 medical doctor degree and a doctoral degree in a medically
13 related field must successfully complete the entire examination
14 series within ten years from the date the first step of the
15 examination is passed. Provided, that the board may, by rule,
16 establish exceptions to the time requirements of this
17 subsection.

18 F. Every applicant for licensure under this section
19 shall pay the fees required by Section 61-6-19 NMSA 1978.

20 G. The board may require fingerprints and other
21 information necessary for a state and national criminal
22 background check."

23 Section 4. Section 61-6-13 NMSA 1978 (being Laws 1989,
24 Chapter 269, Section 9, as amended) is amended to read:

25 "61-6-13. LICENSURE BY ENDORSEMENT. --

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1 A. The board may grant a license [~~without~~
2 ~~examination and~~] by endorsement to an applicant who [~~is~~
3 ~~properly endorsed by the officers of the examining board with~~
4 ~~jurisdiction or by the Canadian medical council and~~]:

5 (1) has graduated from [~~a medical college or~~
6 ~~school in good standing~~] an accredited United States or
7 Canadian medical school;

8 (2) is board certified in a specialty
9 recognized by the American board of medical specialties;

10 (3) has been a licensed physician in
11 the United States or Canada and has practiced medicine in the
12 United States or Canada immediately preceding the application
13 for at least three years;

14 (4) holds an unrestricted license in another
15 state or Canada; and

16 (5) was not the subject of a disciplinary
17 action in a state or province.

18 B. The board may grant a license by endorsement to
19 an applicant who [~~is properly endorsed by the officers of the~~
20 ~~examining board with jurisdiction or by the Canadian medical~~
21 ~~council and~~]:

22 (1) has graduated from a medical [~~college~~]
23 school located outside the United States or Canada;

24 [~~(2) is of good moral character;~~

25 ~~(3)]~~ (2) is in compliance with the United

1 States immigration laws;

2 [~~(4)~~] (3) is board certified in a specialty
3 recognized by the American board of medical specialties;

4 [~~(5)~~] (4) has been a licensed physician in the
5 United States or Canada and has practiced medicine in the
6 United States or Canada immediately preceding the application
7 for at least three years;

8 [~~(6)~~] (5) holds an unrestricted license in
9 another state or Canada; and

10 [~~(7)~~] (6) was not the subject of disciplinary
11 action in a state or province.

12 C. An endorsement provided pursuant to this section
13 shall certify that the applicant has passed an examination that
14 meets with board approval and that the applicant is in good
15 standing in that jurisdiction. In cases when the applicant is
16 board-certified, has not been the subject of disciplinary
17 action that would be reportable to the national practitioner
18 data bank or the healthcare integrity and protection data bank
19 and has unusual skills and experience not generally available
20 in this state, and patients residing in this state have a
21 significant need for such skills and experience, the board may
22 waive a requirement imposing time limits for examination
23 completion that are different from requirements of the state
24 where the applicant is licensed.

25 D. An applicant for licensure under this section

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1 may be required to personally appear before the board or a
2 designated agent for an interview.

3 E. An applicant for licensure under this section
4 shall pay an application fee as provided in Section 61-6-19
5 NMSA 1978.

6 F. The board may require fingerprints and other
7 information necessary for a state and national criminal
8 background check. "

9 Section 5. Section 61-6-14 NMSA 1978 (being Laws 1953,
10 Chapter 48, Section 2, as amended) is amended to read:

11 "61-6-14. ORGANIZED YOUTH CAMP OR SCHOOL TEMPORARY
12 LICENSES AND TEMPORARY LICENSES FOR OUT-OF-STATE
13 PHYSICIANS. --

14 A. The secretary-treasurer of the board or the
15 board's designee may, either by examination or endorsement,
16 [issue] approve a temporary license to practice medicine and
17 surgery to an applicant qualified to practice medicine and
18 surgery in this state [~~either by examination or by endorsement~~]
19 who will be temporarily in attendance at an organized youth
20 camp or school, [~~a temporary license to practice medicine and~~
21 ~~surgery~~] provided that:

22 (1) the practice [~~to~~] shall be confined to
23 enrollees, leaders and employees of the camp or school; [~~and~~
24 ~~the following provisions shall apply;~~

25 (1)] (2) the temporary license shall be issued

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1 for a period not to exceed three months from date of issuance;
2 and

3 [~~(2)~~] (3) the temporary license may be issued
4 upon written application of the applicant, accompanied by such
5 proof of the qualifications of the applicant as specified by
6 board rule.

7 B. The secretary-treasurer of the board or the
8 board's designee may [issue] approve a temporary license to
9 practice medicine and surgery under the supervision of a
10 licensed physician to an applicant who is licensed to practice
11 medicine in another state, territory of the United States or
12 another country and who is qualified to practice medicine and
13 surgery in this state [~~a temporary license to practice medicine~~
14 ~~under the supervision of a licensed physician~~]. The following
15 provisions shall apply:

16 (1) the temporary license may be issued upon
17 written application of the applicant, accompanied by proof of
18 qualifications as specified by rule of the board. A temporary
19 license may be granted to allow the applicant to assist in
20 teaching, conducting research, performing specialized
21 diagnostic and treatment procedures, implementing new
22 technology and for physician educational purposes. A licensee
23 may engage in only the activities specified on the temporary
24 license, and the temporary license shall identify the licensed
25 physician who will supervise the applicant during the time the

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1 applicant practices medicine in New Mexico. The supervising
2 licensed physician shall submit an affidavit attesting to the
3 qualifications of the applicant and activities the applicant
4 will perform; and

5 (2) the temporary license shall be issued for
6 a period not to exceed three months from date of issuance and
7 may be renewed upon application and payment of fees as provided
8 in Section 61-6-19 NMSA 1978.

9 C. The application for a temporary license under
10 this section shall be accompanied by a license fee as provided
11 in Section 61-6-19 NMSA 1978. "

12 Section 6. Section 61-6-15 NMSA 1978 (being Laws 1969,
13 Chapter 46, Section 6, as amended) is amended to read:

14 "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR
15 SUSPENDED-- LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--
16 PROCEDURE-- PRACTICE AFTER SUSPENSION OR REVOCATION-- PENALTY--
17 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED-- FEES AND
18 EXPENSES. --

19 A. The board may refuse to license and may revoke
20 or suspend a license that has been issued by the board or a
21 previous board and may fine, censure or reprimand a licensee
22 upon satisfactory proof being made to the board that the
23 applicant for or holder of the license has been guilty of
24 unprofessional or dishonorable conduct. The board may also
25 refuse to license an applicant who is unable to practice

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1 medicine, or practice as a physician assistant or an
2 anesthesiologist assistant, pursuant to Section 61-7-3 NMSA
3 1978. All proceedings shall be as required by the Uniform
4 Licensing Act or the Impaired Health Care Provider Act.

5 B. The board may, in its discretion and for good
6 cause shown, place the licensee on probation on the terms and
7 conditions it deems proper for protection of the public, for
8 the purpose of rehabilitation of the probationer or both. Upon
9 expiration of the term of probation, if a term is set, further
10 proceedings may be abated by the board if the holder of the
11 license furnishes the board with evidence that the licensee is
12 competent to practice, is of good moral character and has
13 complied with the terms of probation.

14 C. If evidence fails to establish to the
15 satisfaction of the board that the licensee is competent and is
16 of good moral character or if evidence shows that the licensee
17 has not complied with the terms of probation, the board may
18 revoke or suspend the license. If a license to practice in
19 this state is suspended, the holder of the license may not
20 practice during the term of suspension. A person whose license
21 has been revoked or suspended by the board and who thereafter
22 practices or attempts or offers to practice in New Mexico,
23 unless the period of suspension has expired or been modified by
24 the board or the license reinstated, is guilty of a felony and
25 shall be punished as provided in Section 61-6-20 NMSA 1978.

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1 D. "Unprofessional or dishonorable conduct", as
2 used in this section, means, but is not limited to because of
3 enumeration, conduct of a licensee that includes the following:
4 (1) procuring, aiding or abetting a criminal
5 abortion;
6 (2) employing a person to solicit patients for
7 the licensee;
8 (3) representing to a patient that a
9 manifestly incurable condition of sickness, disease or injury
10 can be cured;
11 (4) obtaining a fee by fraud or
12 misrepresentation;
13 (5) willfully or negligently divulging a
14 professional confidence;
15 (6) conviction of an offense punishable by
16 incarceration in a state penitentiary or federal prison or
17 conviction of a misdemeanor associated with the practice of the
18 licensee. A copy of the record of conviction, certified by the
19 clerk of the court entering the conviction, is conclusive
20 evidence;
21 (7) habitual or excessive use of intoxicants
22 or drugs;
23 (8) fraud or misrepresentation in applying for
24 or procuring a license to practice in this state or in
25 connection with applying for or procuring renewal, including

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1 cheating on or attempting to subvert the licensing
2 examinations;

3 (9) making false or misleading statements
4 regarding the skill of the licensee or the efficacy or value of
5 the medicine, treatment or remedy prescribed or administered by
6 the licensee or at the direction of the licensee in the
7 treatment of a disease or other condition of the human body or
8 mind;

9 (10) impersonating another licensee,
10 permitting or allowing a person to use the license of the
11 licensee or practicing as a licensee under a false or assumed
12 name;

13 (11) aiding or abetting the practice of a
14 person not licensed by the board;

15 (12) gross negligence in the practice of a
16 licensee;

17 (13) manifest incapacity or incompetence to
18 practice as a licensee;

19 (14) discipline imposed on a licensee by
20 another state, including probation, suspension or revocation,
21 based upon acts by the licensee similar to acts described in
22 this section. A certified copy of the record of suspension or
23 revocation of the state making the suspension or revocation is
24 conclusive evidence;

25 (15) the use of a false, fraudulent or

1 deceptive statement in a document connected with the practice
2 of a licensee;

3 (16) fee splitting;

4 (17) the prescribing, administering or
5 dispensing of narcotic, stimulant or hypnotic drugs for other
6 than accepted therapeutic purposes;

7 (18) conduct likely to deceive, defraud or
8 harm the public;

9 (19) repeated similar negligent acts;

10 (20) employing abusive billing practices;

11 (21) failure to report to the board any
12 adverse action taken against the licensee by:

13 (a) another licensing jurisdiction;

14 (b) a peer review body;

15 (c) a health care entity;

16 (d) a professional or medical society or
17 association;

18 (e) a governmental agency;

19 (f) a law enforcement agency; or

20 (g) a court for acts or conduct similar
21 to acts or conduct that would constitute grounds for action as
22 defined in this section;

23 (22) failure to report to the board surrender
24 of a license or other authorization to practice in another
25 state or jurisdiction or surrender of membership on any medical

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1 staff or in any medical or professional association or society
2 following, in lieu of and while under disciplinary
3 investigation by any of those authorities or bodies for acts or
4 conduct similar to acts or conduct that would constitute
5 grounds for action as defined in this section;

6 (23) failure to furnish the board, its
7 investigators or representatives with information requested by
8 the board;

9 (24) abandonment of patients;

10 (25) being found mentally incompetent or
11 insane by a court of competent jurisdiction;

12 (26) injudicious prescribing, administering or
13 dispensing of a drug or medicine;

14 (27) failure to adequately supervise, as
15 provided by board rule, a medical or surgical assistant or
16 technician or professional licensee who renders health care;

17 (28) sexual contact with a patient or person
18 who has authority to make medical decisions for a patient,
19 other than the spouse of the licensee [~~after representing or~~
20 ~~inferring that the activity is a legitimate part of the~~
21 ~~patient's treatment~~];

22 (29) conduct unbecoming in a person licensed
23 to practice or detrimental to the best interests of the public;

24 (30) the surrender of a license or withdrawal
25 of an application for a license before another state licensing

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1 board while an investigation or disciplinary action is pending
2 before that board for acts or conduct similar to acts or
3 conduct that would constitute grounds for action pursuant to
4 this section;

5 (31) sexual contact with a former mental
6 health patient of the licensee, other than the spouse of the
7 licensee, within one year from the end of treatment;

8 (32) sexual contact with a patient when the
9 licensee uses or exploits treatment, knowledge, emotions or
10 influence derived from the previous professional relationship;

11 (33) improper management of medical records,
12 including failure to maintain timely, accurate, legible and
13 complete medical records;

14 (34) failure to provide pertinent and
15 necessary medical records to a physician or patient of the
16 physician in a timely manner when legally requested to do so by
17 the patient or by a legally designated representative of the
18 patient;

19 (35) undertreatment of pain as provided by
20 board rule;

21 (36) interaction with physicians, hospital
22 personnel, patients, family members or others that interferes
23 with patient care or could reasonably be expected to adversely
24 impact the quality of care rendered to a patient;

25 (37) soliciting or receiving compensation by a

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1 physician assistant or anesthesiologist assistant from a person
2 who is not an employer of the assistant; or

3 (38) willfully or negligently divulging
4 privileged information or a professional secret.

5 E. As used in this section, "fee splitting"
6 includes offering, delivering, receiving or accepting any
7 unearned rebate, refunds, commission preference, patronage
8 dividend, discount or other unearned consideration, whether in
9 the form of money or otherwise, as compensation or inducement
10 for referring patients, clients or customers to a person,
11 irrespective of any membership, proprietary interest or co-
12 ownership in or with a person to whom the patients, clients or
13 customers are referred.

14 F. Licensees whose licenses are in a probationary
15 status shall pay reasonable expenses for maintaining
16 probationary status, including laboratory costs when laboratory
17 testing of biological fluids are included as a condition of
18 probation. "

19 Section 7. Section 61-6-18.1 NMSA 1978 (being Laws 1994,
20 Chapter 80, Section 10, as amended) is amended to read:

21 "61-6-18.1. PUBLIC SERVICE LICENSE. --

22 A. Applicants for a public service license shall
23 meet all requirements for licensure and shall:

24 (1) be enrolled in a board-approved residency
25 training program either in New Mexico or in another

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1 jurisdiction;

2 (2) obtain written approval from the training
3 program director of the applicant to pursue a public service
4 practice opportunity outside the residency training program;
5 and

6 [~~(3) obtain advance written approval from the~~
7 ~~training program director of the applicant to return to the~~
8 ~~residency training program following the period of public~~
9 ~~service; and~~

10 ~~(4)]~~ (3) satisfy other reasonable requirements
11 imposed by the board.

12 B. A physician with one year postdoctoral training
13 may apply for a public service license [~~when he is~~] to practice
14 under the direct supervision of a licensed physician or [~~has~~]
15 with immediate access to a licensed physician by electronic
16 means when the public service physician is employed in a
17 medically underserved area.

18 C. [~~A public service license shall be valid for a~~
19 ~~period of time not to exceed twelve months.~~] A public service
20 license shall expire on September 1 of each year and may be
21 renewed by the board.

22 D. An applicant for a public service license shall
23 pay the required fees set forth in Section 61-6-19 NMSA 1978. "

24 Section 8. Section 61-6-23 NMSA 1978 (being Laws 1989,
25 Chapter 269, Section 19, as amended) is amended to read:

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1 "61-6-23. INVESTIGATION--SUBPOENA.--

2 A. To investigate a complaint against a licensee,
3 the board may issue investigative subpoenas prior to the
4 issuance of a notice of contemplated action.

5 B. Notwithstanding the provisions of Section 41-9-5
6 NMSA 1978, a review organization shall comply with an
7 investigative subpoena issued pursuant to this section provided
8 that all records received by the board from a review
9 organization:

10 (1) are confidential and not public records
11 for the purposes of the Inspection of Public Records Act; and

12 (2) shall not be disclosed except to the
13 extent necessary to carry out the board's purposes or in a
14 judicial appeal from the board's actions."